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TAN HOO ENG v. PP

COURT OF APPEAL, PUTRAJAYA
AHMAD ZAIDI IBRAHIM JCA
WONG KIAN KHEONG JCA
AZHAHARI KAMAL RAMLI JCA
B [CRIMINAL APPEAL NO: A-05-561-12-2022]
30 OCTOBER 2024

Abstract – *The High Court possesses the discretionary power to transfer criminal trials from a lower court to the High Court, pursuant to s. 417(1) of the Criminal Procedure Code (CPC) subject to: (i) if it appears that a fair and impartial trial cannot be had in the lower court; and (ii) the transfer must be deemed 'expedient for the ends of justice'. The High Court's discretionary power is limited by specific provisions of the CPC, including s. 418A, which grants the Public Prosecutor the power to certify certain cases for transfer.*

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CRIMINAL PROCEDURE: *Courts – Transfer – Application for – Accused faced charges under Penal Code and Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 – Accused charged in Sessions Court – Application by accused to transfer cases from Sessions Court to High Court – Discretionary powers of High Court to transfer criminal trial – Applicable threshold – Whether fair and impartial trial could be had in subordinate court – Whether transfer deemed expedient for ends of justice – Whether application ought to be allowed – Criminal Procedure Code, ss. 2, 4, 417(1) & 418A*

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JURISDICTION: *Courts – High Court – Transfer of cases – Discretion under s. 417(1) of Criminal Procedure Code ('CPC') – Whether exercised only if 'a fair and impartial trial cannot be had in' subordinate court – Applicable threshold – Whether fulfilled – Whether application for transfer 'expedient for ends of justice' – Whether new s. 418A(1) of CPC prevails over s. 417(1) of CPC – Whether Public Prosecutor to issue certificate to transfer cases – Criminal Procedure Code, ss. 417(aa), (bb), (cc), (e) – Federal Constitution, art. 145(3A)*

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The appellant and the complainant each owned 50% of the shares in Blue Star Moulding Sdn Bhd ('BSM'). The complainant had lodged a police report and alleged that the appellant had unlawfully sold wood products belonging to BSM and another company, Blue Star Sawmill Sdn Bhd, to various purchasers and that payments from the alleged unlawful sales were made to Dyera-Tim Sdn Bhd, a company where the appellant was a director and shareholder. The bank accounts belonging to the appellant and her son were frozen under s. 44(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA'). The

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Public Prosecutor ('PP') issued a seizure order in respect of the bank accounts and proffered the following charges against the appellant in the Sessions Court: (i) 12 charges under s. 409 of the Penal Code ('PC'); and (ii) 21 charges under s. 4(1)(a) of the AMLA, *ie*, a total of 33 charges. In the Sessions Court, the PP applied for a discharge not amounting to an acquittal of the 33 charges. The Sessions Court consequently discharged the appellant of the 33 charges without acquitting her of the same. The appellant was subsequently charged by the PP in the Sessions Court as follows: (i) four charges under s. 409 of the PC; and (ii) 54 charges under s. 4(1)(a) of the AMLA. The PP then proffered an additional 26 charges under s. 409 of the PC against the appellant in the Sessions Court. The appellant applied to the High Court to, among others, (i) strike out all the charges against her in the Sessions Court; and (ii) revoke the freezing and seizure orders. The High Court dismissed the appellant's striking out application but allowed her application for the revocation of the freezing and seizure orders. The appellant applied to the High Court to transfer the appellant's trial, from the Sessions Court to the High Court ('first transfer application') but this application was dismissed. The appellant's appeals to the Court of Appeal and the Federal Court were dismissed. A second transfer application was filed in the High Court by the appellant to transfer her trial in the Sessions Court to the High Court and to stay the said trial in the Sessions Court pending the disposal of the second transfer application ('second transfer application') but this application was also dismissed. The appellant's appeal to the Court of Appeal was dismissed. The appellant's appeal to the Federal Court, however, was allowed. The Federal Court ordered the appellant's appeal for the second transfer application to be reheard on its merits by another panel of the Court of Appeal. The appeal before this court concerned the discretionary powers of the High Court to transfer a criminal trial in the Sessions Court to the High Court, pursuant to s. 417(1)(a), (b) and (e) of the Criminal Procedure Code ('CPC'). The appellant contended that: (i) there was *mala fide* in the PP's exercise of discretion under s. 145(3) of the Federal Constitution ('FC'), read with s. 376(1) of the CPC; (ii) the investigation conducted by the police was biased against the appellant in favour of the complainant. Consequently, the appellant's constitutional right to a fair trial pursuant to art. 5(1) of the FC had been contravened; (iii) there was a breach of the appellant's constitutional right to a speedy trial in the Sessions Court under arts. 5(1) and 8(1) of the FC; and (iv) in view of the above breaches of the appellant's constitutional rights, the prosecution of the appellant in the Sessions Court constituted an abuse of court process which could only be quashed by the High Court. Hence, the need to transfer the appellant's trial in the Sessions Court to the High Court.

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Held (dismissing appeal)
Per Wong Kian Kheong JCA delivering the judgment of the court:

(1) The High Court has a discretion to transfer cases, pursuant to s. 417(1) of the CPC. This was clear from the use of the directory term 'may' in s. 417(1)(a), (b) and (e) of the CPC and the judgment of David Wong Dak Wah FCJ in the Federal Court case of *Dato' Sri Mohd Najib Hj Abdul Razak v. PP* ('*Dato' Sri Mohd Najib*'). The High Court may only exercise its discretionary power under s. 417(1)(a) of the CPC if 'a fair and impartial trial cannot be had in' the subordinate court. As further decided in *Dato' Sri Mohd Najib*, the threshold for the High Court to apply s. 417(1) of the CPC is very low, *ie*, 'whenever it is made to appear to the High Court'. If any one or more of the paras. in s. 417(1)(a) to (e) of s. 417(1) of the CPC is/are satisfied, the High Court can only exercise its discretionary power to make any one of the following orders: (i) by virtue of s. 417(1)(aa) of the CPC, to transfer a case in any First Class Magistrates' Court or Sessions Court which is empowered under ss. 121 to 126 of the CPC to try the case to another First Class Magistrates' Court or Sessions Court which is competent to try that case ('lateral transfer order'). Section 417(1)(aa) of the CPC is intended to confer a discretion on the High Court to make a lateral transfer order of a case in a subordinate court in one 'local limits of the jurisdiction' (defined in s. 2(1) of the CPC to mean the 'limits of the ordinary administrative district in which the court house is situated') to another subordinate court of another 'local limits of the jurisdiction'. The High Court cannot, however, transfer a case from a First Class Magistrates' Court to the Sessions Court under s. 417(1)(aa) of the CPC; (ii) to transfer the following cases pursuant to s. 417(1)(bb) of the CPC: (a) to transfer a case in a First Class Magistrates' Court or Sessions Court in one 'local limits of the jurisdiction' to another First Class Magistrates' Court or Sessions Court of the same 'local limits of the jurisdiction'. In this respect, the High Court is making a lateral transfer order; and (b) to transfer a case in a First Class Magistrates' Court or Sessions Court in one 'local limits of the jurisdiction' to the High Court of the same 'local limits of the jurisdiction' ('vertical transfer order'). Due to the presence of the words 'be transferred from a criminal court subordinate to it to any other such criminal court of equal or superior jurisdiction' in s. 417(1)(bb) of the CPC, this provision only empowers the High Court to make a lateral transfer order and vertical transfer order regarding courts which have the same 'local limits of the jurisdiction'; and (iii) s. 417(1)(cc) of the CPC confers a discretion on the High Court to make a vertical transfer order by transferring any case in a subordinate court to the High Court irrespective of the 'local limits of the jurisdiction' of the subordinate court and the High Court. (para 47)

(2) The court was not able to accept any application of the High Court's inherent jurisdiction and/or inherent powers in this appeal. This was because, the Legislature had expressly provided for the High Court's discretion to transfer cases in s. 417(1) of the CPC. Secondly, the CPC is a code of law which is intended by Parliament to be comprehensive. Lastly, our highest court, namely the Federal Court, had applied s. 417(1)(e) and (cc) of the CPC in *Dato' Sri Mohd Najib* and any resort to the High Court's inherent jurisdiction and/or inherent power to transfer cases would be contrary to the decision of the apex court in *Dato' Sri Mohd Najib*. Section 4 of the CPC merely preserves the High Court's inherent jurisdiction and/or inherent power regarding a particular matter which is not provided in the CPC, either expressly or by necessary implication. (paras 49 & 50)

(3) A transfer of the appellant's trial from the Sessions Court to the High Court was not 'expedient for the ends of justice' within the meaning of s. 417(1)(e) of the CPC. If the appellant's trial in the Sessions Court was transferred to the High Court, the High Court would have to manage this case and fix trial dates thereafter. The High Court tries both civil and criminal matters. Hence, the appellant's trial in the High Court may not be expeditiously disposed of. The appellant had not succeeded to fulfil the low threshold of s. 417(1) of the CPC. (paras 54 & 62)

(4) Clause (3A) had been inserted in art. 145 of the FC by the Constitution (Amendment) Act 1988. Pursuant to art. 145(3A) of the FC, by way of the Criminal Procedure Code (Amendment) Act 1989, Parliament had introduced s. 418A of the CPC which empowers the PP to issue personally a certificate to transfer cases. Due to the presence of the words 'Notwithstanding s. 417' in s. 418A(1) of the CPC, it was clear that our Legislature had intended for s. 418A(1) of the CPC to prevail over s. 417(1) of the CPC. (para 57)

Case(s) referred to:

Anuar Ghazali v. PP [2021] 2 CLJ 245 HC ***(refd)***
Attorney-General v. Koh Cho Puan & Ors [1966] CLJU 221; [1966] 1 LNS 221 HC ***(refd)***
Babubhai v. State Of Gujarat & Ors [2010] 12 SCC 254 ***(refd)***
Bell v. Director Of Public Prosecutions Of Jamaica & Anor [1985] 2 All ER 585 ***(refd)***
Connelly v. Director Of Public Prosecution [1964] 2 All ER 401 ***(refd)***
Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***
Datin Seri Rosmah Mansor v. PP & Another Appeal [2022] 4 CLJ 523 CA ***(refd)***
Dato' Sri Mohd Najib Hj Abdul Razak v. PP [2019] 8 CLJ 293 FC ***(refd)***
Douglas Ding Jangan & Ors v. Kerajaan Negeri Sarawak & Ors [2021] 7 CLJ 653 FC ***(refd)***
Gerald Fernandez v. Attorney General, Malaysia [1970] CLJU 27; [1970] 1 LNS 27 FC ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
Lee Kwan Woh v. PP [2009] 5 CLJ 631 FC ***(refd)***

Lim Guan Eng v. PP [2022] 4 CLJ 42 CA ***(refd)***
Malaysia National Insurance Sdn Bhd v. Abdul Aziz Mohamed Daud [1978] CLJU 117; [1978] 1 LNS 117 FC ***(refd)***
Oh Keng Seng v. PP [1974] CLJU 106; [1974] 1 LNS 106 HC ***(refd)***
PP v. Abdul Azeez Abdul Rahim & Another Application [2020] 4 CLJ 386 HC ***(refd)***
PP v. Choo Chuan Wang [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329 HC ***(refd)***
PP v. Dato' Kee Yong Wee, Koh Kim Swee & Other Cases [1987] 2 CLJ 329; [1987] CLJ (Rep) 865 HC ***(refd)***
PP v. Law Say Seck & Ors [1970] CLJU 114; [1970] 1 LNS 114 HC ***(refd)***
PP v. Lim Shui Wang & Ors [1978] CLJU 250; [1978] 1 LNS 250 FC ***(refd)***
PP v. Saat Hassan & Ors [1988] 1 CLJ 80; [1988] 2 CLJ (Rep) 290 HC ***(refd)***
PP v. Syed Abdul Bahari Shahabuddin [1975] CLJU 137; [1975] 1 LNS 137 HC ***(refd)***
Raqeem Rizqin Enterprise & Yang Lain lwn. Ketua Polis Negara & Satu Lagi [2019] 8 CLJ 41 FC ***(refd)***
Riza Shahriz Abdul Aziz v. PP [2019] CLJU 2113; [2019] 1 LNS 2113 HC ***(refd)***
State Of Maharashtra & Ors v. Sarangdharsingh Shivdassingh Chavan & Anor [2011] 11 SCC 577 ***(refd)***
Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors [2021] 6 CLJ 199 FC ***(refd)***
Syahin Hafiy Danial Soh Ahmad Luptepi Amin v. Mansur Yunus & Anor [2019] CLJU 1237; [2019] 1 LNS 1237 HC ***(refd)***
Tan Hoo Eng v. PP [2019] 7 CLJ 264 HC ***(refd)***
Tan Hoo Eng v. PP [2019] CLJU 893; [2019] 1 LNS 893 CA ***(refd)***
Teo Chee Kong v. PP [2021] 6 CLJ 883 CA ***(refd)***
Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Anor [1993] 1 CLJ 261 SC ***(refd)***
Vigny Alfred Raj Vicetor Amratha Raja v. PP [2022] 8 CLJ 1 FC ***(refd)***
Yahya Hussein Mohsen Abdulrab v. PP [2021] 9 CLJ 414 FC ***(refd)***
Yeoh Tat Thong v. Government Of Malaysia & Anor [1973] CLJU 180; [1973] 1 LNS 180 FC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1)(a), 44(1), 50(1)
Courts of Judicature Act 1964, ss. 25(2), 30(1)
Criminal Procedure Code, ss. 4, 121, 122, 123, 124, 125, 126, 173(f)(i), (ii), (m)(i), (ii), (iii), 376(1), 417(1)(a), (b), (e), 417(1)(aa), (bb), (cc), 418A(1)
Evidence Act 1950, ss. 3, 5, 6, 40, 41, 42, 43, 55
Federal Constitution, arts. 5(1), 8(1), 145(3), (3A)
Penal Code, s. 409
Subordinate Courts Act 1948, ss. 63, 85, 99A
Criminal Procedure Code 2010 [Sing], s. 239(1)(a), (b), (c)

For the appellant - Gurbachan Singh Bagawan Singh, Amir Faliq Mohamad Jamil, Gobindeep Singh Gurbachan Singh & Cik Afina Abdul Hakim; M/s Bachan & Kartar
For the respondent - Asmah Musa & Mohd Fuad Abdul Aziz; DPPs

[Editor's note: For the High Court judgment, please see Tan Hoo Eng lwn. PP [2022] CLJU 3106; [2022] 1 LNS 3106 (affirmed).]

Reported by Lina E

JUDGMENT

Wong Kian Kheong JCA:

Introduction

[1] This appeal concerns the discretionary power of the High Court to transfer a criminal trial in the Sessions Court to the High Court pursuant to s. 417(1)(a), (b) and (e) of the Criminal Procedure Code (CPC). This judgment discusses, among others, the far-reaching submission of learned counsel for the above-named appellant (appellant) that the High Court should transfer the appellant's pending trial in the Sessions Court to the High Court because the Sessions Court has no "jurisdiction" and "power" to decide on the following issues raised by the appellant in this case:

(i) there was *mala fide* in the Public Prosecutor's (PP) exercise of discretion under art. 145(3) of the Federal Constitution (FC) read with s. 376(1) of the CPC to charge the appellant in the Sessions Court;

(ii) the investigation conducted by the police in this case was biased against the appellant in favour of Mr Lim Keck Eng (complainant), the person who had lodged a police report against the appellant. Consequently, the appellant's constitutional right to a fair trial pursuant to art. 5(1) of the FC has been contravened in this case;

(iii) there was a breach of the appellant's constitutional right to a speedy trial in the Sessions Court under arts. 5(1) and 8(1) of the FC; and

(4) in view of the above breaches of the appellant's constitutional rights, the prosecution of the appellant in the Sessions Court constitutes an abuse of court process which can only be quashed by the High Court. Hence, the need to transfer the appellant's trial in the Sessions Court to the High Court.

Background

[2] The appellant and complainant each owns 50% of the shares in Blue Star Moulding Sdn Bhd (BSM).

[3] BSM's management is handled by the appellant.

[4] BSM and another company, Blue Star Sawmill Sdn Bhd (BSS):

(i) carry out business of wood processing; and

(ii) share storage and factory facilities.

[5] On 7 April 2014, the complainant lodged a police report and alleged, among others, as follows:

(i) the appellant had unlawfully sold wood products belonging to BSM and BSS to various purchasers (alleged unlawful sales); and

A (ii) payments for the alleged unlawful sales were made to Dyera-Tim Sdn Bhd, a company where the appellant is a director and shareholder (complainant's police report).

[6] The appellant had lodged a police report on 13 May 2014 against, among others, the complainant (appellant's police report). The
B complainant's police report and the appellant's police report shall be referred to in this judgment as the "two police reports".

[7] Mr Lim Hui Jin is the appellant's son (appellant's son).

[8] The bank accounts of:

C (i) the appellant (appellant's bank accounts); and

(ii) the appellant's son (bank account (appellant's son)).

– were frozen under freezing orders (freezing orders) issued by the police pursuant to s. 44(1) of Anti-Money Laundering, Anti-Terrorism
D Financing and Proceeds of Unlawful Activities Act 2001 (AMLA). The appellant's bank account and bank account (appellant's son) shall be referred to collectively in this judgment as the "bank accounts".

[9] The PP subsequently issued a seizure order in respect of the bank accounts under s. 50(1) of the AMLA (seizure order).
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[10] The PP proffered the following charges against the appellant on 15 July 2015 in the Ipoh Sessions Court:

(i) twelve charges under s. 409 of the Penal Code (PC); and

F (ii) twenty-one charges pursuant to s. 4(1)(a) of the AMLA (33 charges).

[11] On 6 October 2017:

(i) the PP applied to the learned Sessions Court Judge for a discharge not amounting to an acquittal (DNAA) of the 33 charges. The Sessions Court consequently discharged the appellant of the 33 charges without
G acquitting her of the same (Sessions Court's DNAA (33 charges)); and

(ii) the appellant was charged by the PP in the Sessions Court as follows:

(a) four charges under s. 409 of the PC; and

(b) fifty-four charges pursuant to s. 4(1)(a) of the AMLA.
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[12] The PP proffered an additional 26 charges under s. 409 PC against the appellant in the Sessions Court on 19 August 2019 (additional 26 charges). All the charges against the appellant are still pending trial in the Sessions Court (appellant's trial (Sessions Court)).

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Civil Suit Filed By Appellant's Son

[13] With regard to the appellant's son:

(i) the seizure order expired on 24 June 2015;

(ii) there was no application under s. 56 of the AMLA by the PP to the High Court to forfeit the sum of money in the bank account (appellant's son);

(iii) the PP did not charge the appellant's son with any offence;

(iv) on 3 November 2018, the appellant's son filed a civil suit in the Ipoh High Court (Civil suit (appellant's son)) against, among others, the following defendants (defendants (civil suit)):

(a) Inspector Muhammad Noorariff Shah bin Zainudin, the investigating officer (IO) of the two police reports (IO (two police reports)); and

(b) Inspector Sopawan a/p Kin, the IO who investigated the AMLA offences in this case (IO (AMLA));

(v) the civil suit (appellant's son) was based on the following two causes of action:

(a) tort of breach of statutory duty; and

(b) tort of misfeasance in public office;

(vi) at the trial of the civil suit (appellant's son):

(a) the complainant admitted that he had received RM3,834,662.02 (sum). With regard to the sum:

(1) the complainant did not inform the police that he had received the sum;

(2) the appellant was instead charged by the PP in respect of the sum; and

(3) both the IO (two police reports) and IO (AMLA) (referred to collectively in this judgment as the "two IOs") did not investigate in respect of the sum;

(b) the IO (two police reports) gave the following evidence, among others:

(1) the IO (two police reports) only investigated the averments made in the complainant's police report against the appellant;

(2) the IO (two police reports) did not investigate the allegations made in the appellant's police report against the complainant; and

(3) the IO (two police reports) admitted that he had been unfair to the appellant; and

(c) the IO (AMLA) admitted that her investigation was not complete, correct and true (tidak lengkap, betul dan benar)

(Evidence (complainant/two IOs (civil suit)));

(vii) the High Court allowed the civil suit (appellant's son) and awarded a total sum of RM300,000 in general damages and exemplary damages against the defendants (civil suit) (High Court's decision (civil suit (appellant's son))); and

(viii) the defendants (civil suit) have appealed to the Court of Appeal against the High Court's decision (civil suit (appellant's son)) (defendants' appeal (civil suit)). The defendants' appeal (civil suit) is pending at the time of the preparation of this judgment.

Striking Out Application By Appellant

[14] On 16 March 2018, the appellant applied to the Ipoh High Court (appellant's striking out application (High Court)) to, among others, strike out all the charges filed against the appellant in the Sessions Court (charges).

[15] According to the appellant's striking out application (High Court), among others, the PP's exercise of discretion to proffer the charges in the Sessions Court:

(i) was *mala fide*;

(ii) oppressed the appellant; and/or

(iii) constituted an abuse of court process

- due to the following reasons:

(a) the police investigation conducted in this case was incomplete and/or biased against the appellant;

(b) the Sessions Court's DNAA (33 charges) and the recharging of the appellant happened on the same day; and

(c) the additional 26 charges were filed subsequently against the appellant.

[16] In respect of the appellant's striking out application (High Court):

(i) the appellant's striking out application (High Court) was dismissed by the High Court (High Court's dismissal (striking out application)). The grounds for the High Court's dismissal (striking out application) are available in [2019] 7 CLJ 264;

(ii) the appellant had appealed to the Court of Appeal against the High Court's dismissal (striking out application) (appellant's appeal (striking out application));

(iii) in the appellant's appeal (striking out application):

(a) the PP had raised a preliminary objection (PO), namely, the High Court's dismissal (striking out application) is not a "final" order which was appealable to the Court of Appeal;

(b) the Court of Appeal upheld the PP's PO and dismissed the appellant's appeal (striking out application) (Court of Appeal's dismissal (striking out application)). The grounds for the Court of Appeal's dismissal (striking out application) are available in [2019] CLJU 893; [2019] 1 LNS 893;

(iv) the appellant applied to the Court of Appeal for leave to review the Court of Appeal's dismissal (striking out application) (appellant's review application (Court of Appeal)); and

(v) the appellant's review application (Court of Appeal) was dismissed by the Court of Appeal.

Appellant's Application To Revoke Freezing Orders And Seizure Order

[17] On 8 January 2020, the appellant applied to the Ipoh High Court to revoke the freezing orders and the seizure order (appellant's application (revocation of freezing orders/seizure order)). With regard to the appellant's application (revocation of freezing orders/seizure order):

(i) the High Court allowed the appellant's application (revocation of freezing orders/seizure order) and ordered the release of the money in the appellant's bank accounts (HC's order (revocation of freezing orders/seizure order)); and

(ii) the PP initially appealed to the Court of Appeal against the HC's order (revocation of freezing orders/seizure order) but this appeal was subsequently withdrawn.

First Transfer Application

[18] On 18 December 2019, the appellant applied to the High Court to transfer the appellant's trial (Sessions Court) from the Sessions Court to the High Court (appellant's first transfer application). The grounds advanced in support of the appellant's first transfer application were as follows, among others:

(i) the police had failed to investigate the appellant's police report. Hence, the appellant's right to a fair police investigation and constitutional right to a fair trial had been denied;

A (ii) there was a breach of the appellant's constitutional right to a speedy trial due to the following reasons:

(a) the Session Court's DNAA (33 charges);

(b) the PP's recharging of the appellant in the Sessions Court; and

B (c) the additional 26 charges were proffered by the PP against the appellant;

(iii) premised on the reasons stated in the above sub-paras. (1) and (2), the appellant's trial (Sessions Court) constituted an abuse of court process by the PP; and

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(iv) in contrast to the High Court, the Sessions Court has no "jurisdiction" and "power" to uphold the appellant's constitutional rights which had been breached by the police and PP in this case.

[19] In the appellant's first transfer application, the learned Deputy Public D Prosecutor (DPP), Encik Harris Ong, conceded that the learned Sessions Court Judge had no jurisdiction and power to decide constitutional questions (DPP's Concession (appellant's first transfer application)).

[20] The appellant's first transfer application was dismissed by the High Court on 8 July 2020 (High Court's dismissal (appellant's first transfer E application)). The grounds for the High Court's dismissal (appellant's first transfer application) are available at [2020] 1 LNS 1968.

[21] The appellant appealed to the Court of Appeal against the High Court's dismissal (appellant's first transfer application) (appellant's appeal (first F transfer application)).

[22] In the appellant's appeal (first transfer application), the appellant filed an application in the Court of Appeal for leave to adduce additional evidence, namely, the evidence (complainant/two IOs (civil suit)) (appellant's further evidence application (Court of Appeal)).

G **[23]** On 12 April 2022, the appellant's further evidence application (Court of Appeal) was dismissed by the Court of Appeal (Court of Appeal's dismissal (appellant's further evidence application)).

[24] The appellant had appealed to the Federal Court against the Court of H Appeal's dismissal (appellant's further evidence application) (appellant's Federal Court Appeal (appellant's further evidence application)).

[25] In the appellant's Federal Court Appeal (appellant's further evidence application), the appellant had filed an application for leave of the Federal Court to adduce the evidence (complainant/two IOs (civil suit)) (appellant's I further evidence application (Federal Court)).

[26] On 2 August 2022, the appellant discontinued the appellant's Federal Court Appeal (appellant's further evidence application) and the appellant's further evidence application (Federal Court).

Second Transfer Application

[27] A second transfer application was filed in the Ipoh High Court by the appellant on 16 August 2022 (second transfer application). The following orders, among others, were sought in the second transfer application:

(i) a transfer of the appellant's trial (Sessions Court) to the Ipoh High Court and be tried therein; and

(ii) the appellant's trial (Sessions Court) shall be stayed pending the disposal of the second transfer application.

[28] The grounds for the second transfer application were, among others, stated in the above sub-paras. 1(1) to (4) and were supported by the following reasons:

(i) the evidence (complainant/two IOs (civil suit));

(ii) the High Court's decision (civil suit (appellant's son));

(iii) the HC's order (revocation of freezing orders/seizure order);

(iv) the Session Court's DNAA (33 charges) and the PP's recharging of the appellant in the Sessions Court on the same day; and

(v) the PP subsequently proffered the additional 26 charges against the appellant.

[29] The High Court dismissed the second transfer application on 16 November 2022 (High Court's dismissal (appellant's second transfer application)).

[30] An appeal was lodged by the appellant to the Court of Appeal against the High Court's dismissal (appellant's second transfer application) (appellant's appeal (second transfer application)).

[31] The PP raised a PO against the appellant's appeal (second transfer application) and the PO was accepted by the Court of Appeal. Hence, the dismissal of the appellant's appeal (second transfer application) on 17 July 2023 (CA's decision (acceptance of PO)).

[32] The appellant appealed to the Federal Court against the CA's decision (acceptance of PO) (Federal Court's Appeal (PO)).

[33] The appellant applied to the Sessions Court for a stay of the appellant's trial (Sessions Court) pending the disposal of the Federal Court's Appeal (PO) (appellant's stay application (Sessions Court)). In the appellant's stay application (Sessions Court), the learned Sessions Court Judge decided,

among others, that the Sessions Court has no jurisdiction to decide on constitutional law issues (Sessions Court's decision (Constitutional Law issues)).

[34] On 21 November 2023, the Federal Court:

(i) allowed the Federal Court's Appeal (PO); and

(ii) ordered the appellant's appeal (second transfer application) to be reheard on its merits by another panel of the Court of Appeal (this appeal).

Contentions Of Parties

[35] The appellant's learned counsel, Mr Gurbachan Singh a/l Bagawan Singh, has sought to persuade us to allow this appeal on the following grounds, among others:

(i) only the High Court (not the Sessions Court) has the "jurisdiction" and "power" to decide the constitutional questions stated in the above sub-paras. 1(1) to (4). In this regard, Mr Gurbachan Singh:

(a) cited the judgment of Hanipah Farikullah JCA (as she then was) in the Court of Appeal in *Datin Seri Rosmah Mansor v. PP & Another Appeal* [2022] 4 CLJ 523, at [48]; and

(b) relied on the DPP's concession (appellant's first transfer application) and the Sessions Court's decision (Constitutional Law issues);

(ii) the following constitutional rights of the appellant had been breached in this case (alleged breaches (appellant's constitutional rights)):

(a) the appellant's constitutional right to a fair investigation by the police as laid down by Zawawi Mohd Salleh FCJ in the Federal Court in *Raqeem Rizqin Enterprise & Yang Lain v. Ketua Polis Negara & Satu Lagi* [2019] 8 CLJ 41, at [62] and [63]; and

(b) the appellant's constitutional right to a fair and speedy trial in the Sessions Court. The following cases had been relied on by Mr Gurbachan Singh:

(1) the judgment of the Federal Court delivered by Gopal Sri Ram FCJ in *Lee Kwan Woh v. PP* [2009] 5 CLJ 631, at [18];

(2) the decision of Tengku Maimun Tuan Mat CJ in the Federal Court in *Yahya Hussein Mohsen Abdulrab v. PP* [2021] 9 CLJ 414, at [30] to [47], [81] and [82]; and

(3) Edgar Joseph Jr J's (as he then was) judgment in the High Court case of *PP v. Choo Chuan Wang* [1992] 2 CLJ 1242; [1992] 3 CLJ (Rep) 329;

(iii) premised on *Yahya Hussein*, the appellant should be acquitted and discharged of the charges as a result of the alleged breaches (appellant's constitutional rights); A

(iv) there was bad faith in the prosecution of the appellant in this case (alleged bad faith (PP)). Consequently, in view of the alleged breaches (appellant's constitutional rights) and the alleged bad faith (PP), the prosecution of the appellant in the Sessions Court constitutes an abuse of court process which can only be quashed by the High Court. Mr Gurbachan Singh cited s. 4 of the CPC, s. 25 of the Courts of Judicature Act 1964 (CJA) and the following cases: B C

(a) the judgment of the Supreme Court delivered by Abdul Hamid Omar LP in *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544;

(b) Tengku Maimum Tuan Mat CJ's decision in the Federal Court case of *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199, at [81], [82] and [87] to [89]; D

(c) Mohamad Zabidin Mohd Diah JCA's (as he then was) judgment in the Court of Appeal in *Teo Chee Kong v. PP* [2021] 6 CLJ 883, at [20];

(d) the decision of Noorin Badaruddin J in the High Court case of *Anuar Ghazali v. PP* [2021] 2 CLJ 245, at [74]; E

(e) Shankar J's (as he then was) judgment in the High Court in *PP v. Saat Hassan & Ors* [1988] 1 CLJ 80; [1988] 2 CLJ (Rep) 290, at 308; F

(f) the decision of Lord Devlin in the House of Lords in *Connelly v. Director Of Public Prosecution* [1964] 2 All ER 401, at 438;

(g) the judgment of the Privy Council delivered by Lord Templeman in an appeal from Jamaica, *Bell v. Director Of Public Prosecutions Of Jamaica & Anor* [1985] 2 All ER 585, at 589 to 590; G

(h) the decision of Dr BS Chauhan J in the Supreme Court of India in *Babubhai v. State Of Gujarat & Ors* [2010] 12 SCC 254, at [34]; and H

(i) Ganguly J's judgment in the Indian Supreme Court case of *State Of Maharashtra & Ors v. Sarangdharsingh Shivdassingh Chavan & Anor* [2011] 11 SCC 577, at [24];

(v) the threshold for the court to transfer a case under s. 417(1) of the CPC is "very low" due to the words "if it appears" in that provision. Reliance was placed by Mr Gurbachan Singh on the following cases: I

A (a) the judgment of the Federal Court delivered by David Wong Dak Wah FCJ (as he then was) in *Dato' Sri Mohd Najib Hj Abdul Razak v. PP* [2019] 8 CLJ 293; [2019] 5 MLJ 44; and

(b) the decision of Sharma J in the High Court case of *PP v. Law Say Seck & Ors* [1970] CLJU 114; [1970] 1 LNS 114; [1971] 1 MLJ
B 199;

(vi) the High Court may, on its own motion, transfer a case from the lower court to the High Court – please refer to the judgment of Eusoffe Abdoolcader J (as he then was) in the High Court in *PP v. Syed Abdul Bahari Shahabuddin* [1975] CLJU 137; [1975] 1 LNS 137; [1976]
C 1 MLJ 87;

(vii) the High Court should transfer the appellant's trial (Sessions Court) to the High Court pursuant to s. 417(1)(a), (b) and/or (e) of the CPC;

(viii) based on the 2-1 majority decision of Mary Lim FCJ in the Federal
D Court case of *Vigny Alfred Raj Vicetor Amratha Raja v. PP* [2022] 8 CLJ 1, at [45], Mr Gurbachan Singh submitted that the prosecution did not give any reason for the DNAA of the 33 charges;

(ix) the following High Court judgments in:

E (a) *Oh Keng Seng v. PP* [1974] CLJU 106; [1974] 1 LNS 106; [1974] 2 MLJ 48; and

(b) *PP v. Dato' Kee Yong Wee, Koh Kim Swee & Other Cases* [1987] 2 CLJ 329; [1987] CLJ (Rep) 865; [1988] 2 MLJ 198

F – were decided before the development of an accused person's constitutional rights by our Federal Court (as submitted in the above sub-paras. 1(1) to (4)); and

(x) Mr Gurbachan Singh cited many cases which had been transferred from the Sessions Court to the High Court pursuant to certificates
G issued personally by the PP under s. 418A(1) of the CPC. Hence, according to Mr Gurbachan Singh, there was no reason why the court should not have transferred the appellant's trial (Sessions Court) to the High Court.

[36] The learned DPP, Datin Asmah binti Musa, advanced the following
H contentions, among others, to resist this appeal:

(i) the alleged breaches (appellant's Constitutional rights) and the alleged bad faith (PP) are "best left to be determined by the trial court", *ie*, the Sessions Court;

I (ii) by virtue of s. 43 of the Evidence Act 1950 (EA), the High Court's decision (civil suit (appellant's son)) is irrelevant in this appeal;

(iii) the following Federal Court judgments have decided that all subordinate courts, including the Sessions Court, have jurisdiction to consider any constitutional law question:

(a) Suffian FJ's decision in *Gerald Fernandez v. Attorney General, Malaysia* [1970] CLJU 27; [1970] 1 LNS 27; [1970] 1 MLJ 262; and

(b) the judgment of Azmi LP in *Yeoh Tat Thong v. Government Of Malaysia & Anor* [1973] CLJU 180; [1973] 1 LNS 180; [1973] 2 MLJ 86; and

(iv) reliance had been placed by Datin Asmah on, among others, the following cases:

(a) the decisions of the Malaysian High Court, namely:

(1) *Oh Keng Seng*;

(2) *Dato' Kee Yong Wee*;

(3) *Riza Shahriz Abdul Aziz v. PP* [2019] CLJU 2113; [2019] 1 LNS 2113; and

(4) *PP v. Abdul Azeez Abdul Rahim & Another Application* [2020] 4 CLJ 386; and

(b) the judgments of the High Court of Singapore as follows:

(i) *Lin Tah Hwa v. PP* [1987] 1 CLJ 95; [1987] CLJ (Rep) 1104; [1987] 1 MLJ 106; and

(ii) *Attorney-General v. Koh Cho Puan & Ors* [1966] CLJU 221; [1966] 1 LNS 221; [1986] 2 MLJ 339.

Issues

[37] The following questions arise in this appeal:

(i) whether subordinate courts have the "jurisdiction" and the "power" to decide constitutional law issues;

(ii) should the High Court have exercised its discretion to transfer this case in the Sessions Court to the High Court under s. 417(1)(a), (b) and (e) of the CPC? In this regard:

(a) can the High Court transfer a case in the subordinate court to the High Court pursuant to:

(1) s. 4 of the CPC; or

(2) the High Court's inherent jurisdiction and/or power?; and

(b) whether the High Court can take into account the following considerations:

(1) the alleged breaches (appellant's constitutional rights);

(2) the alleged bad faith (PP);

(3) the Sessions Court's decision (Constitutional Law issues);

(4) the DPP's concession (appellant's first transfer application);

(5) the personal exercise of the PP's discretion under s. 418A(1) of the CPC to transfer other cases in the subordinate courts to the High Court;

(6) the High Court's decision (civil suit (appellant's son)); and

(7) the evidence (complainant/two IOs (civil suit)); and

(iii) is there any reason for the Court of Appeal to intervene in this appeal in respect of the exercise of the learned High Court Judge's discretion to dismiss the appellant's second transfer application?

Our Decision

Preliminary Matters

[38] Before we give our grounds for this appeal, there are two preliminary matters which we should address.

Can Appellant Rely On s. 25 Of The CJA To Support This Appeal?

[39] We reproduce below s. 25 of the CJA and para. 12 of the Schedule to the CJA (para. 12):

> **s 25 Powers of the High Court.**
>
> (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
>
> (2) *Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:*
>
> *Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.*
>
> *Paragraph 12 Transfer of proceedings*
>
> *Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:*
>
> *Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.* (emphasis added)

[40] The power of the High Court in para. 12 to transfer "any proceedings to any other court or to or from any subordinate court" is subject to the proviso to s. 25(2) of the CJA (Provided that all such powers shall be exercised in accordance with any written law). In other words, the High Court's power to transfer a criminal case in para. 12 is subject to "written law" which in this case is s. 417(1) of the CPC.

For the above decision, we rely on a judgment of a five-member coram of the Federal Court delivered by Suffian LP in *PP v. Lim Shui Wang & Ors* [1978] CLJU 250; [1978] 1 LNS 250; [1979] 1 MLJ 65, at 66, as follows:

> *It is true that [Paragraph 12], read alone, appears to give the learned judge power "to transfer any proceedings … to … any subordinate court"; but that paragraph cannot be read alone, it must be read in conjunction with the proviso to section 25(2), so that this power must be exercised "in accordance with any written law or rules of court relating to the same". These words mean, as I stated at page 232 in Damodaran v. Vasudevan [1975] 2 MLJ 231, that if there are written laws or rules of court relating to power conferred on the High Court by the Schedule, it may be exercised only in accordance with them, not otherwise.*
>
> *In our judgment, there is written law relating to the power of transferring proceedings from the High Court, namely the Rules of the Supreme Court as regards civil and the Criminal Procedure Code as regards criminal proceedings.*
>
> *As the cases in question are criminal, in our judgment the learned judge could transfer them only in accordance with sections 417, 418 and 418A of the Criminal Procedure Code.* (emphasis added)

It is to be noted that at the time of the Federal Court's decision in *Lim Shui Wang*, Parliament had abolished appeals to the Privy Council for constitutional and criminal matters. Hence, when the Federal Court delivered the judgment in *Lim Shui Wang*, the Federal Court was our highest court for criminal matters at that time. In the circumstances, for the purpose of this appeal, s. 25(2) of the CJA read with para. 12, cannot be invoked to allow the High Court to transfer the appellant's trial (Sessions Court) to the High Court.

Counsel's Duty To Extract Ratio Decidendi Of Cases

[41] In *Douglas Ding Jangan & Ors v. Kerajaan Negeri Sarawak & Ors* [2021] 7 CLJ 653; [2021] 4 MLJ 946, at [29], Abdul Rahman Sebli FCJ (as he then was) delivered the following judgment of the Federal Court:

> [29] … *As officers of the court whose duty to the court is paramount, counsel's duty first and foremost is to assist the court in arriving at a correct decision. If accepted, the proposition of law advanced by counsel would be adopted and it becomes the court's pronouncement. It does not matter that the proposition comes from counsel. What matters is that it becomes the judgment of the court. There is some truth to the saying that good judgments come from good submissions.* (emphasis added)

[42] In the performance of learned counsel's primary duty to assist the court to administer justice (as explained in *Douglas Ding Jangan*), instead of citing a particular passage of a written judgment of a case, learned counsel should extract the *ratio decidendi* of the case and attempt to persuade the court to apply the *ratio decidendi* of that case, especially if it is a *ratio decidendi* of our apex court which is binding on all lower courts. This is because, in view of the doctrine of *stare decisis*, only the *ratio decidendi* (not any *obiter dictum*) ascertained from a written judgment of a superior court, has binding effect. We refer to the judgment of Raja Azlan Shah FJ (as his Majesty then was) in the Federal Court case of *Malaysia National Insurance Sdn Bhd v. Abdul Aziz bin Mohamed Daud* [1978] CLJU 117; [1978] 1 LNS 117; [1979] 2 MLJ 29, at 32 as follows:

> *However, I would once again emphasize what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict ratio decidendi.* (emphasis added)

With regard to the extraction of a *ratio decidendi* from a written judgment, we rely on the following decision of the High Court in *Syahin Hafiy Danial Soh Ahmad Luptepi Amin v. Mansur Yunus & Anor* [2019] CLJU 1237; [2019] 1 LNS 1237; [2021] 8 MLJ 297, at [14]:

> [14] *I am not able to accept the reference by the Defendant's learned counsel to Other Cases except if written judgments have been delivered in the Other Cases. This is because from the view point of the stare decisis doctrine, only the ratio decidendi ascertained from a written judgment of a superior court, has binding or persuasive effect. …*
>
> *Without a written judgment of a previous case, the court cannot ascertain the ratio decidendi of the previous case by considering the following three matters (3 Matters) -*
>
> (1) *the material facts of the case which give rise to the issue to be decided by the court;*
>
> (2) *the rule of law which has been applied by the court to resolve the issue; and*
>
> (3) *the reasoning of the court in applying the rule of law to decide the issue in question.* (emphasis added)

Do Subordinate Courts Have "Jurisdiction" And "Power" To Decide Constitutional Law Issues?

[43] The following provisions of:

(i) ss. 63, 85 and 99A of the Subordinate Courts Act 1948 (SCA) and para. 27 of the Third Schedule to the SCA (para. 27);

(ii) s. 30(1) of the CJA; and

(iii) ss. 173(f)(i), (ii) and (m)(i) to (iii) of the CPC are reproduced below:

SCA

s 63 Criminal jurisdiction.

A Sessions Court shall have jurisdiction to try all offences other than offences punishable with death.

s 85 Criminal jurisdiction of First Class Magistrate.

Subject to limitations contained in this Act a First Class Magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed ten years imprisonment or which are punishable with fine only and offences under sections 392 and 457 [PC].

s 99A Further powers and jurisdiction of courts.

In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule.

Paragraph 27. Powers under other laws.

Such other powers as are now or may hereafter be conferred upon it by any written law.

CJA

s 30. Reference of constitutional question by subordinate court.

(1) Where in any proceedings in any subordinate court any question arises as to the effect of any provision of the Constitution the presiding officer of the court may stay the proceedings and may transmit the record thereof to the High Court.

CPC

s 173(f)(i) When the case for the prosecution is concluded the Court shall consider whether the prosecution has made out a prima facie case against the accused.

(ii) If the Court finds that the prosecution has not made out a prima facie case against the accused, the Court shall record an order of acquittal.

…

(m)(i) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

(ii) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it and the Court shall pass sentence according to law.

Provided that before the Court passes sentence, the Court shall, upon the request of the victim of the offence or the victim's family, call upon the victim or a member of the victim's family to make a statement on the impact of the offence on the victim or his family; and where the victim or a member of the victim's family is for any reason unable to attend the

A proceedings after being called by the Court, the Court may at its discretion admit a written statement of the victim or a member of the victim's family.

(iii) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal. (emphasis added)

B **[44]** Contrary to the submission by Mr Gurbachan Singh, we have no hesitation to decide that a Sessions Court and First Class Magistrate's Court (referred to collectively in this judgment as the "Subordinate Courts") have both the "jurisdiction" and "power" to decide constitutional law questions. Our reasons are as follows:

C (i) a Sessions Court has the "jurisdiction" under s. 63 of the SCA to "try all offences other than offences punishable with death" (trial jurisdiction (Sessions Court)). There is no exception in s. 63 of the SCA or any other provision in the SCA which states that the trial jurisdiction (Sessions Court) shall exclude the jurisdiction to decide constitutional law issues;

D (ii) by virtue of s. 85 of the SCA, a First Class Magistrate's Court has the "jurisdiction" to try certain offences (trial jurisdiction (First Class Magistrate's Court)). The SCA has imposed certain limitations on the trial jurisdiction (First Class Magistrate's Court) but such limitations do not preclude the First Class Magistrate's Court from hearing constitutional law questions;

E (iii) reading together s. 99A of the SCA and para. 27, the Subordinate Courts have the following "powers" under written law, namely s. 173(f)(i), (ii) and (m)(i) to (iii) of the CPC:

F (a) power pursuant to s. 173(f)(i) and (ii) of the CPC to decide whether the prosecution has proven a *prima facie* case of the charge against an accused person (Subordinate Court's Power (end of prosecution case)); and

G (b) power to decide whether the prosecution has proven a charge against an accused person beyond all reasonable doubt at the end of the entire case (Subordinate Court's Power (end of entire case)) – please refer to s. 173(m)(i) to (iii) of the CPC.

H The CPC does not state that the Subordinate Court's power (end of prosecution case) and Subordinate Court's power (end of entire case) do not include the power to decide on constitutional law issues;

I (iv) the jurisdiction and power of the subordinate courts to decide on constitutional law questions is fortified by s. 30(1) of the CJA which provides that a subordinate court has the discretionary power to refer to the High Court any constitutional law issue which arises in the proceedings in the subordinate court. Such a discretion is clear from the employment of the permissive term "may" by the legislature in s. 30(1)

of the CJA. It is thus clear that if a constitutional law question arises in a case in a subordinate court, the subordinate court has the discretion to decide on the constitutional law issue or may refer such an issue to the High Court pursuant to s. 30(1) of the CJA.

If we have accepted Mr Gurbachan Singh's contention that the Sessions Court has no jurisdiction to decide on constitutional law questions, this will render nugatory the discretionary power conferred by Parliament on the Sessions Court under s. 30(1) CJA to refer constitutional law issues to the High Court; and

(v) the interpretation of the above statutory provisions is supported by the following judgment of Azmi LP (sitting alone in an application to the Federal Court) in *Yeoh Tat Thong*, at p. 87:

> *Apart from all that, it is my view that the High Court and indeed even subordinate courts have jurisdiction to determine any question affecting the provisions of the [FC], except where the matter comes under Article 4 [FC].* (emphasis added)

High Court's Discretionary Power To Transfer Cases

Scope s. 417(1)(a), (b) And (e) Of The CPC

[45] We reproduce below s. 417(1) and (2) of the CPC:

High Court's power to transfer cases

s 417(1) Whenever it is made to appear to the High Court:

(a) *that a fair and impartial trial cannot be had in any criminal Court subordinate to it;*

(b) *that some question of law of unusual difficulty is likely to arise;*

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the same;

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) *that such an order is expedient for the ends of justice, or is required by any provision of this [CPC],*

it may order -

(aa) *that any offence be tried by any Court not empowered under sections 121 to 126 but in other respects competent to try such offence;*

(bb) *that any particular case or class of cases be transferred from a criminal Court subordinate to it to any other such criminal Court of equal or superior jurisdiction; or*

(cc) *that any particular criminal case be transferred to and tried before the High Court.*

A (2) *The High Court may make an order under subsection (1) either on the report of the lower Court, or on the application of the Public Prosecutor or the accused person, or on its own initiative.* (emphasis added)

[46] Our s. 417(1) of the CPC is in *pari materia* with a provision in the previous Criminal Procedure Code of Singapore (Previous CPC (Singapore)).
B Consequently, cases decided by Singapore courts regarding the transfer provision in the previous CPC (Singapore) are persuasive and may be applied by our courts. The present s. 239(1)(a) to (c) of Singapore's Criminal Procedure Code 2010 is similar to our s. 417(1)(a), (b) and (e) of the CPC.

[47] We are of the following opinion regarding the High Court's power to
C transfer cases under s. 417(1)(a), (b) and (e) of the CPC:

(i) the High Court has a discretion to transfer cases pursuant to s. 417(1) of the CPC. This is clear from the use of the directory term "may" in that provision and the judgment of David Wong Dak Wah FCJ (as he then was) in the Federal Court in *Dato' Sri Mohd Najib*, at [48], [49], [56]
D and [60];

(ii) the High Court may only exercise its discretionary power under s. 417(1)(a) of the CPC if "a fair and impartial trial cannot be had in" the subordinate court. In this regard, Hashim Yeop Sani J (as he then
E was) had decided as follows in *Oh Keng Seng*, at p. 48:

> *First, the application is made under (s 417 CPC). It should be borne in mind that broadly speaking, the primary object of that section is to ensure a fair and impartial trial. I have examined the affidavit of the applicant and have found nowhere in the affidavit to show that a fair and impartial trial cannot be had in the court before which the applicant is charged.*
F (emphasis added)

(iii) with regard to s. 417(1)(b) of the CPC:

(a) it was decided in *Oh Keng Seng*, at p. 48, as follows:

> G *More specifically, the decision on this application may be made after considering (s. 417(1)(b) CPC) that is, if it appears to the court that some question of law of unusual difficulty is likely to arise the court may order that the case be transferred to and tried before itself. The use of the word "unusual" in that paragraph would seem to me to indicate that the difficulty in relation to the law involved must be such that either the question of law*
> H *is one which is unique or out of the usual or ordinary or one which has not been dealt with by any court before. The fact that a constitutional point of great importance is expected to be raised during the trial is not sufficient ground to transfer under this section. The exercise of the power based upon such a ground would in my opinion result in absurdity because it will at least theoretically be possible to raise some constitutional question in a good*
> I *number of criminal cases where the liberty or rights of the subject are involved. It may be argued, although I have my doubts, that (s. 417(1)(b) CPC) may*

apply to a first prosecution under the new amendment to section 3 of the Sedition Act 1948; but you cannot say that of this case either. As such I have gone through the affidavits of the applicant and the respondent and found nothing to satisfy (s. 417 CPC) for an order of transfer to be justified.

It is my view therefore that the application as it stands has no merit and should be dismissed. (emphasis added)

(b) in the Court of Appeal case of *Lim Guan Eng v. PP* [2022] 4 CLJ 42, at [26], Che Mohd Ruzima Ghazali JCA had approved *Oh Keng Seng*;

(c) in *Dato' Kee Yong Wee*, KC Vohrah J (as he then was) had followed Singapore cases on a provision in the previous CPC (Singapore) which was in *pari materia* with our s. 417(1)(b) of the CPC. According to *Dato' Kee Yong Wee*, at pp. 867 to 868 (CLJ); p. 200 (MLJ):

Our Sessions Court judges, like their Singapore counterparts in the District Courts, are either barristers or otherwise have other recognized legal qualifications. And under our present system generally, our Sessions Court judges do not have less than seven years standing in the Judicial and Legal Service. In Kuala Lumpur, there are four Sessions Court judges and their experience as officers of the Judicial and Legal Service ranges from 11 years to 22 years.

Section 417(1)(b) of our law corresponds with section 184(1)(b) of the Singapore Criminal Procedure Code. There have been several applications in Singapore under section 184(1)(b) for transfer of cases from the Subordinate Courts to the High Court. The reported decisions show that invariably these applications have been dismissed. P. Coomaraswamy J in Lin v. Public Prosecutor [1987] 1 MLJ 106 has discussed these and certain relevant Indian decisions (in respect of somewhat similar Indian provisions) in a historical perspective. Let it be noted that the provisions in India and in the Straits Settlements for transfer of cases on ground of some question of law of unusual difficulty arising were to cater for the past era where judicial officers who were supposed to hear certain difficult cases were either not legally qualified or were inexperienced to deal with them and could hardly have been expected to deal with intricate points of law. P. Coomaraswamy J. said at p. 109:

> *In the light of the decisions I have referred to, for the provisions of section 184(1)(b) to be successfully invoked today the case must be an extraordinarily rare one and I find it extremely difficult to think of one. For the historical reasons I have stated, and, given the qualifications and experience of district judges and the more senior magistrates, I am of the firm view that for all practical purposes and intent, paragraph (b) of section 184(1) has fallen into desuetude and obsolescence for transfer of cases to the High Court.*

At this hearing, there was no attempt to show what the questions of law of unusual difficulty will be. I personally cannot see any. Surely it cannot be argued that our Sessions Court judges will not be able to see what the constituent ingredients of criminal breach of trust under section 409 or of abetment under section 109 [PC] are. To so argue is not to give credit to the legal qualifications, the considerable experience and professional competence that these judicial officers possess. If indeed there should really be questions of law of unusual difficulty, then the prosecution and the defence are enjoined to do what they normally do in any case in any court, to clearly define and argue the issues fully and exhaustively before the court. But as I have said earlier I personally cannot see any question of law of unusual difficulty arising in the cases which are the subject matter of these applications. Rare indeed, as P. Coomaraswamy J. has observed in the case of Lin [1987] 1 MLJ 106, can such an application based on the ground be invoked today. And like him I am wont to think "that for all practical purposes and intents", this particular provision of law – in our case, (s. 417(1)(b) CPC) – "has fallen into desuetude and obsolescence for transfer of cases to the High Court."

To my mind, the applications under section 417(1)(b) have no merit.
(emphasis added)

(d) *Dato' Kee Yong Wee* had been approved by the Court of Appeal in *Lim Guan Eng*, at [25]; and

(e) unless the Court of Appeal's judgment in *Lim Guan Eng* is overruled by the Federal Court, from the viewpoint of the doctrine of *stare decisis*, the judgment in *Lim Guan Eng* subsequently binds the Court of Appeal, the High Court and all subordinate courts – please refer to the Federal Court's judgment delivered by Peh Swee Chin FCJ in *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645; [1998] 1 MLJ 1, at 12 to 13;

(iv) the scope of s. 417(1)(e) of the CPC has been explained in the following two cases:

(a) in *Dato' Sri Mohd Najib*, at [3] to [6], [8] to [10], [14], [48] to [51], [53] to [56] and [60], the Federal Court had given the following judgment:

[3] The charges were initially filed in the sessions court as required by law. However, the cases of the seven charges were transferred to the High Court pursuant to certificates issued by the [PP] under s. 418A [CPC] and s. 80 of the MACC Act 2009 ('transfer certificate').

…

[*4] On 7 February 2019 the [PP] withdrew the transfer certificate for the seven charges premised on the ground of 'abundance of caution' to avoid the possibility that the transfer certificate may be declared unconstitutional and*

held to be a nullity in view of two recent Federal Court decisions in Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526 and Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145.

[5] The withdrawal of the transfer certificate by the [PP] then became a matter of dispute as to what would be the legal ramifications. Learned counsel for the appellant challenged the legitimacy of the withdrawal by the [PP].

[6] The learned judge then heard submissions and after due deliberation found that there was nothing improper in the action taken by [PP] in regard to the transfer certificate.

…

[8] The salient facts relating to this withdrawal of the transfer certificate in our view must be made known and they are these. The [PP] at the withdrawal hearing on 7 February 2019 after informing the court of his intention of withdrawal then pointed out to the learned judge that there are two options available to him.

[9] The first option was that upon withdrawal, the cases on the seven charges would be remitted back to the sessions court where they were first filed. The prosecution then will make an application under s. 417 to the court to transfer the aforesaid cases to the High Court. The route *via* the s. 418A would be waived.

[10] *The second option was under s. 417(2) [CPC] where the learned judge can on its own motion transfer the cases from the sessions court back to the High Court.*

…

[14] *On his power to transfer cases from the sessions court, the learned judge found as a matter of fact that he had the power to transfer under s. 417(2) [CPC] and he equated this power to that of revisionary powers of the High Court under the CPC and especially the [CJA], where the High Court may act on its own motion and call for the record of proceedings in the subordinate courts.*

…

Correctness of the learned Judge's exercise of discretion under (s. 417(2) CPC).

[48] As to whether the learned judge was correct to exercise the discretion, the answer can only be found in the manner the learned judge exercised that discretion. To put it in another way, did the learned judge take into consideration of relevant matters. It is only when the learned judge had weighed in all the relevant consideration prior to exercise his discretion can it be said that he had act judicially.

[49] Section 417(2) requires the learned judge to direct his mind to matters as stipulated under s. 417(1)(a)-(e) when exercising his discretion. The provision that is relevant to the present transfer is s. 417(1)(e) which reads:

…

The crucial phrase here is 'expedient for the ends of justice'.

[50] The learned High Court judge transferred the cases to the same High Court instead of going to the new case registration route as it appeared to him that such an order is expedient in the ends of justice premised on the following considerations:

(a) there were three contested applications on the seven charges one of which is the basis of the present appeal. There have been case management sessions, various issues had been raised and considered and trial dates have been fixed to begin on 12 February 2019;

(b) the accused applied for a transfer to the High Court under the same provision in other charges;

(c) this case has generated so much public interest locally as well as internationally;

(d) the issuance of the certificates under ss. 418A and 60 were never objected by the accused when he was first charged;

(e) there is no prejudice or injustice caused to the accused as there has been no changes to the proceeding at all other than the transfer; and

(f) parties should have been ready for the trial which ought to have begun in less than one week after the proceeding in the High Court. The prosecution has also complied with s. 51A in the delivery of documents that they intend to tender. Trial date was fixed seven months ago.

[51] *It should be noted that the threshold is very low by virtue of the language used in s. 417(1) – 'when it appears to the High Court' instead of 'if the Court is satisfied' which require further consideration of the matter.*

…

[53] *As regard to the type of order the learned judge could make, he is bound by s. 417(1)(aa)-(cc) which provides as follows:*

…

[54] *The learned judge made an order for the seven charges to be transferred and tried before the High Court. This is in line with s. 417(1)(cc). The complaint here is more on whether it is legitimate for the learned judge to order the transfer of the seven charges back to the same High Court without going through the registration system. The learned judge had correctly decided that he could do so, bearing in mind that the court would exercise this power*

on its own motion (suo motu) only exceptionally. The learned High Court judge found that the considerations that he cited earlier compelled the suo motu act.

…

[55] *The learned High Court judge further stated that it is expedient in the end of justice to transfer the seven charges on the court's own initiative as the charges might be registered in a different High Court had they gone through the registration route which means a new trial date would have to be fixed depending on the court's available dates whereas the dates have been fixed in the present High Court several months back in August 2018. This would further delay the proceedings which would be against public interest due to the seriousness of the cases.*

[56] *We see no error on the part of the learned judge in exercising his discretion in the manner than he did. He did not take into irrelevant considerations. Appellate courts generally do not disturb the manner in which a judge exercises his discretion unless there is a blatant error. Here there was no such blatant error. In fact, the contrary is true. The discretion had been exercised judicially. It is in the public interest as well as the interest of the accused that criminal cases are to be disposed of expeditiously by the courts.*

…

[60] *Based on the foregoing, we agree with the High Court as well as the Court of Appeal that the learned High Court judge did not err in law in exercising his power under s. 417(2). Thus, the transfer was valid and not flawed neither in law nor in fact. The discretion has been judicially exercised hence there is no question of legality as contended by the appellant.* (emphasis added); and

(b) according to Mohd Nazlan Ghazali J (as he then was) in the High Court case of *Riza Shahriz Abdul Aziz*, at [6], [7], [9], [56] and [57]:

[6] *The applicant advances a number of reasons to support his transfer application. In essence, the applicant formulates the following grounds.*

[7] *First, it is said that that questions of law of unusual difficulty are likely to arise, where several issues of constitutional importance could be raised during the proceedings of the case. It is asserted that the proceedings will involve complex and novel questions of law, including inter alia the provisions of the AMLATFPUAA, Mutual Assistance in Criminal Matters Act 2002 ("MACMA"), Chapter VA of the Evidence Act 1950 and the Federal Constitution. There will be complex questions of law of unusual difficulty which arise in the case as the offences were allegedly committed outside Malaysia and may involve issues of extraterritorial jurisdiction, cross border transactions and admissibility of evidence from foreign countries. As such, it would be, so the applicant argues, in the interests of expedience that the case be heard in the High Court which has the jurisdiction to determine such complex matters.*

…

A [9] *Thirdly, it is submitted that the transfer will be expedient for the ends of justice and will ensure the applicant's constitutional right to a fair trial is preserved.*

…

[56] *In my view, a related and crucial aspect to the expression 'expedient for the ends of justice' found in (s. 417(1)(e) CPC) is the fundamental necessity of*
B *ensuring the integrity of the administration of criminal justice is always upheld. In the context of transfer of cases, an important facet is the promotion of judicial efficiency.*

[57] *This concerns the efficient management of the scheduling of the cases registered in the Courts in general. It cannot be denied that unwarranted*
C *applications for transfers interferes with the efficient trial arrangements of criminal cases.* (emphasis added)

(v) as decided in *Dato' Sri Mohd Najib*, at [51], the threshold for the High Court to apply s. 417(1) of the CPC is "very low", *ie*, "Whenever it is made to appear to the High Court"; and

D (vi) if any one or more of the paragraphs in s. 417(1)(a) to (e) of s. 417(1) of the CPC is/are satisfied, the High Court can only exercise its discretionary power to make any one of the following orders:

(a) by virtue of s. 417(1)(aa) of the CPC, to transfer a case in any First
E Class Magistrate's Court or Sessions Court which is empowered under ss. 121 to 126 of the CPC to try the case to another First Class Magistrate's Court or Sessions Court which is competent to try that case (lateral transfer order).

Section s. 417(1)(aa) of the CPC is intended to confer a discretion
F on the High Court to make a lateral transfer order of a case in a subordinate court in one "local limits of the jurisdiction" (defined in s. 2(1) of the CPC to mean the "limits of the ordinary administrative district in which the court house is situated") to another subordinate court of another "local limits of the
G jurisdiction". The High Court cannot, however, transfer a case from a First Class Magistrate's Court to the Sessions Court under s. 417(1)(aa) of the CPC;

(b) to transfer the following cases pursuant to s. 417(1)(bb) CPC:

H (i) to transfer a case in a First Class Magistrate's Court or Sessions Court in one "local limits of the jurisdiction" to another First Class Magistrate's Court or Sessions Court of the same "local limits of the jurisdiction". In this respect, the High Court is making a lateral transfer order; and

I (ii) to transfer a case in a First Class Magistrate's Court or Sessions Court in one "local limits of the jurisdiction" to the High Court of the same "local limits of the jurisdiction" (vertical transfer order).

Due to the presence of the words "be transferred from a criminal court subordinate to it to any other such criminal court of equal or superior jurisdiction" in s. 417(1)(bb) of the CPC, this provision only empowers the High Court to make a lateral transfer order and vertical transfer order regarding courts which have the same "local limits of the jurisdiction"; and

(c) s. 417(1)(cc) of the CPC confers a discretion on the High Court to make a vertical transfer order by transferring any case in a subordinate court to the High Court irrespective of the "local limits of the jurisdiction" of the subordinate court and the High Court – please refer to *Dato' Sri Mohd Najib*, at [54].

High Court's Inherent Jurisdiction, Inherent Power And s. 4 Of The CPC

[48] Section 4 of the CPC provides as follows:

s 4 *Saving of powers of High Court*

Nothing in this Code shall be construed as derogating from the powers or jurisdiction of the High Court. (emphasis added)

[49] We are not able to accept any application of the High Court's inherent jurisdiction and/or inherent power in this appeal. This is because firstly, our legislature has expressly provided for the High Court's discretion to transfer cases in s. 417(1) of the CPC. Secondly, our CPC is a code of law which is intended by Parliament to be comprehensive. Lastly, our highest court, namely, the Federal Court, has applied s. 417(1)(e) and (cc) of the CPC in *Dato' Sri Mohd Najib* and any resort to the High Court's inherent jurisdiction and/or inherent power to transfer cases will be contrary to the decision of our apex court in *Dato' Sri Mohd Najib*.

[50] Section 4 of the CPC merely preserves the High Court's inherent jurisdiction and/or inherent power regarding a particular matter which is not provided in the CPC, either expressly or by necessary implication. As explained in the above paras. 47 and 49, the High Court's discretionary power to transfer cases is circumscribed by s. 417(1) of the CPC.

Should The Second Transfer Application Be Allowed?

Whether Appellant Can Rely On s. 417(1)(a) Of The CPC

[51] We have no hesitation to affirm the High Court's dismissal (appellant's second transfer application) on the ground that the appellant had not adduced any evidence that a "fair and impartial trial" cannot be conducted in the Sessions Court within the meaning of s. 417(1)(a) of the CPC.

Can The Appellant Invoke s. 417(1)(b) Of The CPC?

[52] As explained in the above Part F, the Sessions Court has the "jurisdiction" and "power" under:

(i) section 63 of the SCA;

(ii) section 99A of the SCA read with para. 27; and

(iii) sections 173(f)(i), (ii) and (m)(i) to (iii) of the CPC

– to decide constitutional law issues, including the alleged breaches (appellant's Constitutional Rights) and the alleged bad faith (PP).

[53] Premised on the Court of Appeal's decision in *Lim Guan Eng* which had approved the judgments in *Oh Keng Seng* and *Dato' Kee Yong Wee* (please refer to the above sub-para. 47(3)), the learned Sessions Court Judge who is trying the charges in this case:

(i) is legally qualified; and

(ii) has sufficient experience in the judicial and legal services to decide competently on the alleged breaches (appellant's constitutional rights) and the alleged bad faith (PP).

In view of the above reasons, there is no likelihood of any "question of law of unusual difficulty" which cannot be decided by the learned Sessions Court Judge in the appellant's trial (Sessions Court). Accordingly:

(i) we see no reason for the application of s. 417(1)(b) of the CPC in this case; and

(ii) we cannot accept the Sessions Court's decision (Constitutional Law issues).

Is s. 417(1)(e) Of The CPC Applicable In This Case?

[54] We do not think that a transfer of the appellant's trial (Sessions Court) to the High Court is "expedient for the ends of justice" within the meaning of s. 417(1)(e) of the CPC. If the appellant's trial (Sessions Court) is transferred to the Ipoh High Court, the High Court has to manage this case and fix trial dates thereafter. It is to be noted that the Ipoh High Court tries both civil and criminal matters. Hence, the appellant's trial in the High Court may not be expeditiously disposed of. In other words, a transfer of the appellant's trial (Sessions Court) to the High Court is not "expedient for the ends of justice" as understood in s. 417(1)(e) of the CPC.

What Is Effect Of DPP's Concession (Appellant's First Transfer Application)?

[55] We are of the view that the DPP's concession (appellant's first transfer application) is of no consequence in this appeal. Our reasons are as follows:

(i) irrespective of any concession by learned counsel, either for the prosecution or the defence, the High Court has a duty to ensure that its discretionary power is exercised in accordance with s. 417(1)(b) of the CPC. We rely on the following judgment of Mohd Nazlan Ghazali J (as he then was) in *Abdul Azeez*, at [20], [76] and [77]:

> [20] *These applications were instituted by the prosecution. They were supported by the respondents. It should be stated at the outset that that however does not mean that this court must allow the applications. The test is not whether the parties in dispute consent to the applications but whether they meet the requirements of the law. Otherwise there is a failure on the part of this court to properly discharge its duty in the exercise of judicial discretion. The law in this context is contained as referred to by the applicant in s. 417(1)(e) of the CPC.*
>
> …
>
> [76] *The applicant finally argues that the applications ought to be allowed as the same are not contested by the respondents. However, as I have stated earlier, even though the parties may have agreed, this does not in any way bind the court which is free to decide otherwise should a proper exercise of its judicial discretion result in a contrary determination.*
>
> [77] *The fact that the respondents have no objection to the transfer application does not relieve the applicant of its duty to satisfy this court that the requirements stipulated under s. 417(1)(e) of the CPC have been met.*
>
> (emphasis added)

(ii) as explained in the above Part F, the DPP's Concession (appellant's first transfer application) is erroneous as the Sessions Court has the "jurisdiction" and the "power" to decide constitutional issues. As such, we are not bound in any manner by the DPP's concession (appellant's first transfer application). We rely on the following judgment of the Supreme Court delivered by Edgar Joseph Jr SCJ in *Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 1 CLJ 261; [1993] 1 MLJ 12, at pp. 263 to 264 (CLJ); pp. 15 to 16 (MLJ):

> *It is true that before us, Encik Balia Yusof did not attempt to attack the finding of the learned judge that the appellant had been assaulted and, indeed, in answer to a question by the court, he categorically stated that for purposes of this appeal the fact of assault should be regarded as common ground since there was no affidavit of denial. Accordingly, the appeal was argued before us on the basis that the finding of the learned judge that the appellant had been assaulted as alleged was correct.*
>
> *In our view, the concession by Encik Balia Yusof that the fact of assault should be regarded as common ground since there was no affidavit of denial, was mistakenly made because the bare allegation of assault made in the affidavit of the appellant's sister was wholly unsupported by any evidence, there being no suggestion that she was herself present at the time of the alleged assault.*

Consequently, the allegation of assault by the appellant's sister was worthless as evidence being entirely hearsay.

Similarly, in the absence of a confirmatory affidavit by the appellant, the letter of her solicitors dated 28 September 1990 which, we would repeat in passing, says 'we understand that our client had been assaulted while under detention', instead of the common form 'we have been instructed by our client etc,' (emphasis added) suffers from the same defect.

It follows, therefore, that there being not a scrap of evidence that the appellant had been assaulted, there was nothing to rebut and so no need for an affidavit of denial.

We need hardly add that the mistaken concession by Encik Balia Yusof that the fact of assault should be regarded as common ground, is in no way binding on this court. If he was mistaken then his error cannot oblige this court to follow that view. (emphasis added)

Whether Appellant Can Rely On Cases Transferred Pursuant To PP's Certificate Under s. 418A(1) Of The CPC

[56] Reproduced below are art. 145(3A) of the FC, s. 418A(1) and (2) of the CPC:

FC

Article 145 *Attorney General*

(3A) *Federal law may confer on the Attorney General power to determine the courts in which or the venue at which any proceedings which he has power under Clause (3) to institute shall be instituted or to which such proceedings shall be transferred.*

CPC

s 418A *Trials by High Court on a certificate by the [PP]*

(1) *Notwithstanding section 417 and subject to section 418B, the [PP] may in any particular case triable by a criminal Court subordinate to the High Court issue a certificate specifying the High Court in which the proceedings are to be instituted or transferred and requiring that the accused person be caused to appear or be produced before such High Court.*

(2) *The power of the [PP] under subsection (1) shall be exercised by him personally.* (emphasis added)

[57] Clause (3A) has been inserted in art. 145 of the FC by the Constitution (Amendment) Act 1988 (Act A704). Pursuant to art. 145(3A) of the FC, by way of the Criminal Procedure Code (Amendment) Act 1989 (Act A728), Parliament has introduced s. 418A of the CPC which empowers the PP to issue personally a certificate to transfer cases. Due to the presence of the words "Notwithstanding s. 417" in s. 418A(1) of the CPC, it is clear that our Legislature has intended for s. 418A(1) of the CPC to prevail over s. 417(1) of the CPC. Hence, Mr Gurbachan Singh cannot support this appeal by relying on cases transferred from the Subordinate Courts to the High Court under s. 418A of the CPC.

Is High Court's Decision (Civil Suit (Appellant's Son)) Relevant In This Appeal? A

[58] Sections 40 to 43 of the EA provide as follows:

s 40 *Previous judgments relevant to bar a second suit or trial*

The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether the court ought to take cognizance of the suit or to hold the trial. B

s 41 *Relevancy of certain judgments in probate, etc., jurisdiction*

(1) A final judgment, order or decree of a court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant. C

(2) Such judgment, order or decree is conclusive proof: D

(a) that any legal character which it confers accrued at the time when the judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when the judgment, order or decree declares it to have accrued to that person; E

(c) that any legal character which it takes away from any such person ceased at the time from which the judgment, order or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which the judgment, order or decree declares that it had been or should be his property. F

s 42 *Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41*

Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state. G

s 43 *Judgments, etc., other than those mentioned in sections 40 to 42 when relevant*

Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this [EA]. (emphasis added) H

[59] We find that the High Court's decision (civil suit (appellant's son)) is not relevant to the appellant's trial (Sessions Court) because:

(i) the High Court's decision (civil suit (appellant's son)) does not fall within the ambit of ss. 40 to 42 of the EA; and I

(ii) the existence of the High Court's decision (civil suit (appellant's son)) is "irrelevant" under s. 43 of the EA as follows:

A (a) the High Court's decision (civil suit (appellant's son)) is not a "fact in issue" (as understood in s. 3 of the EA) in the appellant's trial (Sessions Court); and

(b) the High Court's decision (civil suit (appellant's son)) is not "relevant" in the appellant's trial (Sessions Court) (within the
B meaning of s. 5 read with ss. 6 to 55 of the EA).

[60] If the High Court's decision (civil suit (appellant's son)) is not relevant in the appellant's trial (Sessions Court), the appellant cannot therefore rely on the High Court's decision (civil suit (appellant's son)) to support this
C appeal.

Whether Appellant Can Rely On Evidence (Complainant/Two IOs (Civil Suit))

[61] The evidence (complainant/two IOs (civil suit)) may support the alleged breaches (appellant's constitutional Rights) and the alleged bad faith (PP) in the appellant's trial (Sessions Court). Having said that, we fail to see
D how the evidence (complainant/two IOs (civil suit)) can support This appeal in respect of the application of s. 417(1)(a), (b) and (e) of the CPC.

Had Appellant Fulfilled Low Threshold Of s. 417(1) Of The CPC?

[62] We have no hesitation to decide that the appellant had not succeeded
E to fulfil the low threshold of s. 417(1) of the CPC. This is because as explained in the above Parts H(1) to H(3), there is no valid ground to transfer the appellant's trial (Sessions Court) to the High Court pursuant to s. 417(1)(a), (b) and (e) of the CPC.

Should There Be Appellate Intervention Regarding High Court's Exercise
F **Of Discretion To Dismiss Second Transfer Application?**

[63] In accordance with *Dato' Sri Mohd Najib*, at [48], [56] and [60], an appellate court should only set aside an exercise of discretion of a lower court if:

G (i) there is an error of law or fact in the exercise of the lower court's discretion; or

(ii) the lower court had:

(a) taken into account an irrelevant consideration; or

H (b) failed to consider a relevant matter.

In this appeal, the above grounds are not present so as to justify our appellate intervention regarding the High Court's exercise of discretion in dismissing the second transfer application.

I **Conclusion**

[64] Premised on the above reasons, this appeal is dismissed.